

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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PERCY LAVAE BACON,

Case No. 2:17-cv-01744-RFB-GWF

Plaintiff,

ORDER

v.

JAMES COX et al.,

Defendants.

I. DISCUSSION

Plaintiff is a prisoner proceeding *pro se*. Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and two applications to proceed *in forma pauperis*. (ECF No. 1, 1-1, 3). However, on at least three (3) occasions, this Court and the Ninth Circuit Court of Appeals have dismissed civil actions commenced by Plaintiff while in detention as frivolous or for failure to state a claim upon which any relief may be granted.¹

Pursuant to 28 U.S.C. § 1915(g), “if [a] prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted,” he may not proceed *in forma pauperis* and, instead, must pay the full \$400.00 filing fee in advance unless he is “under imminent

¹ See *Bacon v. Laswell*, 2:09-cv-02058-PMP-PAL (district court dismissed case for failure to state a claim and appellate court dismissed appeal as frivolous); *Bacon v. State Of Nevada*, 2:10-cv-01451-KJD-LRL (appellate court dismissed appeal as frivolous). The Court takes judicial notice of its prior records in the above matters.

1 danger of serious physical injury." 28 U.S.C. § 1915(g).
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3 Plaintiff submitted his complaint on June 23, 2017. (ECF No. 1-1). In the
4 complaint, Plaintiff sues various prison officials for events that took place in 2015 when
5 prison officials disciplined Plaintiff for refusing to pick up his legal mail during an excessive
6 heat warning. (See generally ECF No. 1-1). The Court finds that these allegations fail to
7 plausibly allege that Plaintiff is in imminent danger of serious physical injury. See
8 *Andrews v. Cervantes*, 493 F.3d 1047, 1055-56 (9th Cir. 2007) (holding that the exception
9 to § 1915(g) applies if the complaint makes a plausible allegation that the prisoner faced
10 an ongoing danger of serious physical injury at the time of filing). As such, Plaintiff must
11 pre-pay the \$400.00 filing fee in full.

12 **II. CONCLUSION**

13 For the foregoing reasons, IT IS ORDERED that Plaintiff's applications to proceed
14 *in forma pauperis* (ECF No. 1, 3) are denied.

15 IT IS FURTHER ORDERED that this action will be dismissed without prejudice
16 unless Plaintiff pays the \$400.00 filing fee in full within thirty (30) days of entry of this
17 order.

18 IT IS FURTHER ORDERED that the Clerk of the Court shall send Plaintiff two copies
19 of this order. Plaintiff shall make the necessary arrangements to have one copy of this
20 order attached to the check paying the filing fee.

21 IT IS FURTHER ORDERED that the Clerk of the Court shall retain the complaint
22 (ECF No. 1-1).

23 IT IS FURTHER ORDERED that the motion to extend prison copy work limit (ECF
24 No. 2) is denied, without prejudice, at this time.

25 DATED this 24th day of January, 2018.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE